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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 122

GUY J. D'ANTONIO,

Respondent

vs.

MRS. GEORGIE REAGON,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEAL FOR THE PARISH OF OR-
LEANS, STATE OF LOUISIANA, AND BRIEF IN
SUPPORT THEREOF.

✓ LEWIS R. GRAHAM,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

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No. 122

GUY J. D'ANTONIO,

Petitioner,

vs.

MRS. GEORGIE REAGON

**IN RE: MRS. GEORGIE REAGON APPLYING FOR A WRIT OF
CERTIORARI TO THE COURT OF APPEAL FOR THE PARISH OF
ORLEANS, STATE OF LOUISIANA**

PETITION FOR WRIT

*To the Honorable the Supreme Court of the United States of
America:*

Mrs. Georgie Reagon, a resident of the City of New Orleans, Louisiana, of full age, brings this her petition for a Writ of Certiorari to be directed to the Court of Appeal for the Parish of Orleans, Louisiana, to review a judgment and decree of said Court of Appeal rendered on January 29, 1948, rehearing refused on February 3, 1948.

Which said judgment affirmed a judgment rendered by the First City Court of the City of New Orleans, Louisiana

rendered on September 15, 1947 ordering the eviction of this petitioner, Mrs. Reagon, from the premises, No. 2300-2302 Ursuline Avenue, which had been leased to her by Guy J. D'Antonio, original plaintiff and defendant here, and in support of this petition shows:

I

That this proceeding was begun in the First City Court of the City of New Orleans, Louisiana (not a court of record where the amount involved is less than One hundred dollars) by a motion and order (numbered 2 in the Transcript of Record filed herewith) on said Mrs. Reagon to show cause why she should not surrender possession of the said premises which had been leased to her by said Guy J. D'Antonio, the landlord, or be evicted therefrom, the basis for the said demand being that her possession and occupancy was not protected by the United States Housing and Rent Act of 1947, although not so specifically stated in the motion.

II

That said motion and rule to show cause was filed on September 4th, 1947, after the Housing and Rent Act of 1947 had become effective.

III

That said Mrs. Reagon duly filed her pleadings, first, an Exception of No cause of Action and an answer in which she alleged that the premises involved in the suit were occupied by her as her dwelling and also were occupied by others as a dwelling, thereby bringing the said housing accommodations under the protection of Section 209, (a) sub-paragraph (1) B, and Sec. 209, (a) sub-paragraph 5 of the Housing and Rent Act of 1947, Transcript pages 6 and 7.

IV

That after a trial in the First City Court, a judgment was rendered on September 15th, 1947, ordering said Mrs. Reagon to deliver possession of the leased premises or be evicted therefrom—Page 8 of Transcript of Record.

V

That under the law of Louisiana, since the monthly rental was less than One hundred dollars (\$100.00) no record was made of the evidence produced in the court of original jurisdiction, viz., First City Court of New Orleans; Constitution of Louisiana of 1921, Art. VII, Sec. 91.

VI

That an appeal from the judgment of the First City Court of the City of New Orleans was duly taken to the Court of Appeal for the Parish of Orleans, where under the law of Louisiana the whole case was heard and tried *de novo*: *Livaudais v. Lee She Tung*, 197 La. 844.

VII

That a motion to dismiss the appeal was filed in the said Court of Appeal—Transcript of Record, page 12, but it was denied by the Court. Transcript of Record, page 16.

VIII

That on January 29th, 1948, the said Court of Appeal rendered a judgment affirming the judgment of the lower court, which had ordered the eviction, and said Court of Appeal refused a Rehearing on February—Transcript of Record, pages 17 and 19.

IX

That under the law of Louisiana, the judgment of the said Court of Appeal in cases appealed to it from the said

First City Court is final and not subject to appeal; but such judgments are subject only to the supervisory power of the Supreme Court of the State of Louisiana by means of a Writ of Certiorari.

X

That at the trial of this case *de novo* in the said Court of Appeal, no record was made of the evidence. But as authorized by Articles 602 and 603 of the Code of Practice of Louisiana an Agreed Statement of Facts was signed by both parties litigant, and is included in the Transcript of Record at pages 20, 21, and 22.

XI

That a petition for a Writ of Certiorari was duly and timely presented to the Supreme Court of the State of Louisiana; on March 27, 1948, the Supreme Court of the State of Louisiana refused to grant said Writ.

XII

That a duly certified copy of the record is presented herewith as part of this petition, and said record shows that there is no material conflict of fact.

XIII

That petitioner here relies solely upon the provisions of Section 209 of the Housing and Rent Act of 1947 (a) 1, B and (a) 5, which she claims prevents the eviction of any lessee or sub-lessee of furnished housing accommodations used for Housekeeping.

XIV

That the Agreed Statement of Facts herein shows that since 1942, petitioner, Mrs. Reagon, had leased, by monthly lease, the whole premises Nos. 2300-2302 Ursuline Avenue from said D'Antonio.

That it further shows that the said double house contained sixteen rooms and that every one of those rooms except the two rooms rented to a Mr. Noto were used for *housekeeping purposes*; that each of those rooms were lived in and used as a *home* by the sub-lessee thereof and his family; that the usual activities and functions were conducted in each room by the various occupants thereof; that each apartment, as rented out by this petitioner, was a separate complete furnished housing accommodation for Housekeeping.

XV

Petitioner further shows that the intent and purpose of the afore-quoted paragraphs of Section 209 of the Housing and Rent Act of 1947 were to protect the *possession* of any occupant of controlled housing accommodations, under either a lease or a sub-lease, who was using the housing accommodations as housekeeping quarters for living or dwelling purposes.

XVI

That therefore this case involves the determination of a Federal question and the determination of a right claimed under said Federal law, and petitioner alleges that the decision of the Louisiana Court was against the rights she claimed under said Federal law.

XVII

That the decision of the aforesaid Court of Appeal is erroneous as a matter of law, because:

1st. That Court, as shown by Statement of Facts, p. 22 of Transcript, stated that it based its judgment on a ruling by the Rent Control Office, dated December 10, 1946, which was rendered under the 1942 Rent Act; and the 1942 Act did not contain any provisions exactly or nearly similar to

those in Section 209, a, 1 B and Section 209, a, 5 of the Housing and Rent Act of 1947.

2nd. The unambiguous language of Section 209 of the 1947 Act prevents an eviction if the accommodations are used for living or dwelling purposes or if they are furnished housekeeping accommodations used as a home—and both these bars against eviction existed here.

3rd. The Court failed to see that Paragraph a-5 and part of paragraph a, 1, B is entirely new matter (not in 1942 Act or Regulations) and that its purpose is to protect Occupancy of any controlled housing accommodations that are used for housekeeping purposes as a home, whether by one family or more than one family.

That these reasons are fully set forth in a brief filed herewith as part hereof.

XVIII

That although this is an important issue, petitioner has been advised that this precise issue has not been passed on by your Honorable Court.

That the different Rent Directors of the various areas held various ways under the 1942 Rent Act, in regard to eviction of a sub-lessee and in regard to lessees who were subletting part of the leased premises, and that there is a confusion of authority in regard to the issue involved here.

That therefore, this important issue should be set clear by a determination by this Court.

Wherefore, petitioner prays that a Writ of Certiorari may issue herein out of and under the seal of this Court to the Court of Appeal for the Parish of Orleans, Louisiana, commanding that Court to certify the case to this Court for a review and determination as provided in the Act of Congress known as the Judicial Code.

And that your petitioner may have such further and other relief in the premises as to this Court may seem appropriate and in conformity with said Act.

Mrs. Georgie Reagon, by Lewis R. Graham, Her Attorney.

AFFIDAVIT

STATE OF LOUISIANA,

Parish of Orleans:

Before me, the undersigned authority Personally Came and Appeared Mrs. Georgie Reagon, who did depose and say:

That she is the petitioner in the above petition that she has read the same and knows the contents thereof.

That the facts therein stated are true to the best of her knowledge, information and belief.

MRS. GEORGIE REAGON.

Sworn to and subscribed before me, June 22nd, 1948.

GEORGE PIAZZA,

[SEAL.]

Notary Public.

**BRIEF ON BEHALF OF MRS. GEORGIE REAGON,
APPLICANT**

MAY IT PLEASE THE COURT:

The issue herein affects so many occupants of leased housing accommodations in every State, that we are emboldened to ask the Court's consideration of the important issue involved herein, that is, the meaning of Section 209, a, 1, B and Section 209, a, 5 of the United States Housing and Rent Act of 1947, designated hereinafter simply as Rent Act.

We urge that both the language and the intent of said Section 209 of Rent Act, justify the exercise of the Court's supervisory power.

LIMITATION ON EVICTION

Section 209 of the Rent Act allows evictions of tenants in certain cases; but the permission is in the form of a Negative Pregnant, which does not allow the eviction UNLESS the Landlord can show the existence of one of the five conditions precedent as set forth in Paragraphs Nos. 1 to 5 of sub-section a of Sec. 209.

**Facts Preclude Application of Sub-Paragraphs 2, 3, and 4 of
Sub-Section A of Section 209**

Under the pleadings and the agreed Statement of Facts, there was no possible basis for the application of paragraphs 2 or 3 or 4 of sub-section a, of Section 209.

The only possible basis for the allowing of the eviction could be Sec. 209, (a) 1-B or Sec. 209, a, 5; but neither of those sections applies, as we show.

The Court of Appeal did not say on which sub-paragraph it relied, but its comment in the Agreed Statement of Facts would indicate that it based its opinion on the

fact that the tenant was using the housing accommodations for other than living or dwelling quarters, i. e., sub-paragraph a, 1, B; because she had sub-leased it.

Section 209, (a) 1 B Does Not Authorize Eviction Here

The Statement of Facts conclusively negatives any right of eviction under a, 1, B.

The relevant part of that section provides that no eviction suit be maintainable—we quote—“unless the tenant is using such housing accommodations for other than living or dwelling purposes.”

The error into which the Court of Appeal fell was in interpreting or interpolating the word **HIS** before the words “living or dwelling purposes.”

The Court of Appeal interpreted the section as if it read “unless the tenant is using such housing accommodations for other than **HIS** living or dwelling purposes.”

But the word **HIS** is not in the act and cannot be put there under any reasonable interpretation.

Such an interpretation and application are contrary to general law and every day experience.

RIGHT TO SUBLEASE

Every lease of real property carries the right to sub-lease, unless there is statutory or contractual prohibition—35 Corp. Jur., p. 975.

Louisiana Revised Civil Code, Article 2725 specifically allows subletting unless contracted against.

Congress is presumed to know the law—if it had intended that the tenant’s protection under the Rent Act would be lost by a sub-lease of any part of the leased premises, wouldn’t it have said so in plain words?

The answer is obvious.

Both Rent Acts—1942 and 1947—concerned with protect-

ing Occupancy in rented housing accommodations as well as controlling amount of rent.

As part of that dual purpose, it was necessary to prevent housing accommodations from being rented for the more lucrative purpose of trade.

Congress knew that every time a housing accommodation was converted to a purpose "other than living or dwelling" the housing shortage was increased.

Within the purpose of the Rent Act, it made no difference to Congress how many times, or to how many persons, the house was sub-let, PROVIDED ONLY that the housing accommodations, the living or dwelling purposes, were not impaired or curtailed.

It is obvious that Congress did not mean to prevent a man with four in his family subleasing a part of his house to a family of eight—such a sub-lease stretched the housing accommodations, and lessened the housing shortage.

We submit that the provision "for other than living or dwelling purposes" can refer only to the PURPOSE, not to the one exercising that purpose. We urge that no matter how many sub-leases there might be, if the last sub-lessee were living in the premises as his home, the premises were being used for living or dwelling purposes. The Act provides that to justify eviction, the accommodations must be used for OTHER THAN LIVING or dwelling purposes. The Statement of Facts shows that these premises were not so used.

The interpretation adopted by the Court of Appeal leads to the astonishing conclusion that Congress meant to jeopardize every tenant's right to possession under the Rent Act if he should sublet any part of the premises.

In view of the almost universal right to sublease, it seems clear that if Congress had intended that a sublease to another tenant, *even though for living purposes* would give a right to eviction, it would have said so in unequivocal language.

It was only necessary to insert some restrictive word, such as HIS "tenant's" before the words "living or dwelling purposes."

If that part of the Act read "other than *his* living or dwelling purposes" or "other than the tenant's living or dwelling purposes" there could be no question that the Court's opinion was justified.

But the Act does not so read—the condition precedent to authorize eviction, is for "other than living or dwelling purposes." Admittedly, 14 of the rooms were used for living and dwelling purposes.

Of course, Mrs. Reagon had the right to sublease, both by Art. 2725 of the Revised Civil Code of Louisiana but admittedly, she had the implied consent of the landlord; she had been subleasing from 1942 to 1947—Statement of Facts, p. 21, of Transcript.

We submit that the only way you can uphold the Louisiana Court's judgment is to hold that the word HIS must be read into the phrase in dispute. This is an interpretation not contemplated by Congress, according to a reasonable reading of the Act, certainly, such an interpretation is not necessary for its enforcement.

So, we come back to our original proposition—since 14 of the rooms were used for dwelling purposes, an eviction cannot be authorized here under Sec. 209, a, 1, B.

Section 209, (a) 5 Does Not Authorize Eviction Here

Eviction is not authorized here under Section 209, a, 5 because that section requires that the housing accommodations should be:

1. Nox-housekeeping.
2. Furnished housing accommodations located within a single dwelling, etc.
3. Occupied in part by the landlord or his immediate family.

The Agreed Statement of Facts clearly shows that two of these three requirements for eviction DID NOT exist here—viz., these accommodations were Housekeeping not NON-Housekeeping, and no part thereof was occupied by the landlord.

We submit that the landlord cannot have an eviction unless he satisfies every applicable condition in Section 209 of the Rent Act.

Therefore, this eviction is not authorized under Section 209, a, 5.

Pertinent Case

In closing, we ask your consideration of the only decision in point that we believe is extant—*May v. Demont*, 186 N. Y. Supp. 113.

The issue there was so nearly identical with the issue here, that said case should throw light on what Congress meant by the term “for other than living or dwelling purposes.”

Plaintiff, landlord, had rented a 16-room house to defendant. We quote the Court’s statement of the case:

“Defendant occupied not more than one or two rooms as her dwelling and rented the other rooms to others.”

The landlord claimed that to prevent eviction the whole premises had to be occupied by the original tenant herself. The New York Statute, Chap. 920 of laws of 1920 provided; in part:

“that in view of the existing public emergency no summary proceedings shall be maintainable to recover the possession of real property occupied for dwelling purposes.”

Said the Court:

“the only question in this case is whether the house leased by the tenant is ‘occupied for dwelling purposes within the meaning of the statute.’ ”

The court held that the whole premises, although 14 rooms were rented out to others were occupied by the defendant as her "dwelling" and refused to allow the eviction, saying:

"Though she managed the whole house and derived her sole revenue therefrom, nevertheless the premises were occupied by her as a dwelling."

We do not for a moment suggest that that decision is binding on this Court or that Congress was bound thereby; but it is a fair presumption that Congress knew of this New York decision and also a fair presumption that Congress used the term "living or dwelling purposes" in the sense that the New York Court had interpreted the similar term in the earlier New York Statute.

Summary

To summarize:

1. Eviction here was not authorized by Sec. 209, a, 5, of the Housing and Rent Act of 1947 because two essential requirements were lacking, viz.: 1, the rooms were used for House keeping; and 2, no part of the premises were occupied by landlord.

2. Eviction here was not authorized by Sec. 209, a, 1 B, because every room but two was used for "living or dwelling purposes."

We respectfully submit that a Writ of Certiorari should issue herein.

Respectfully,

LEWIS R. GRAHAM,
*Attorney for Mrs. Georgie
Reagon, Applicant.*

June, 1948.